



CE Assignment MOU Performance Report January 1, 2016 – June 30, 2017

Pursuant to 23 U.S.C. 326
State Assumption of Responsibility for
Categorical Exclusions

UDOT Environmental Services

Prepared August 2017

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1. Background

Pursuant to 23 U.S.C. 326, the Utah Department of Transportation (UDOT) and the Federal Highway Administration (FHWA) have entered into a Memorandum of Understanding (MOU) that assigned to UDOT the authority and responsibility to determine whether a transportation project qualifies as a Categorical Exclusion (CE) under the National Environmental Policy Act (NEPA) (CE MOU). Under this MOU, UDOT's assigned CE determinations, authorities, and responsibilities were limited only to those projects that met the conditions specified in 23 CFR 771.117. UDOT was also assigned FHWA's responsibilities for consultation with all Federal resource agencies and for compliance with all applicable Federal regulations for projects determined to be CEs under 23 CFR 771.117. For CE's processed under this MOU, the State of Utah assumed the legal responsibility for its NEPA decisions, and as such it is subject to Federal court jurisdiction. The original MOU was executed in 2008 and was renewed in 2011 and in 2014.

Stipulation IV(F)(2) of the CE MOU requires UDOT to submit to FHWA self-assessment reports summarizing its performance, including areas needing improvement and quality control efforts. This performance report for the CE MOU covers the period between January 1, 2016 and June 30, 2017.

2. Purpose

The primary objective of this report is to provide FHWA with a summary of UDOT's performance administering the CE authorities and responsibilities assigned to it under the CE MOU. This report includes the following information:

- Statistical Summary of CE MOU Self-Assessment Reports
- Quality Control Summary: Areas for Improvement and Improvement Measures Taken
- Quality and Timeliness Discussions
- Recommendations

3. Statistical Summary of CE MOU Semi-Annual Reports

Stipulation IV(F)(1) of the CE MOU requires UDOT to provide semi-annual reports to FHWA on all CE determinations made. Information included in these reports includes: region of the project, project number, project description, 23 CFR 771.117 category, identification of impacts to key resources, location (route, milepost), preparer's name, approver's name, and document approval date. UDOT has met this stipulation and the semi-annual reports are available on the UDOT website at: <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:2053>.

For the current self-assessment reporting period, UDOT has prepared and approved 237 CEs under the CE MOU. Figures 1 and 2 show the number of CEs completed within each UDOT Region for this reporting period. The number of CEs prepared in each region varies; Regions 2 and 4 prepared slightly more CEs than Regions 1 and 3.

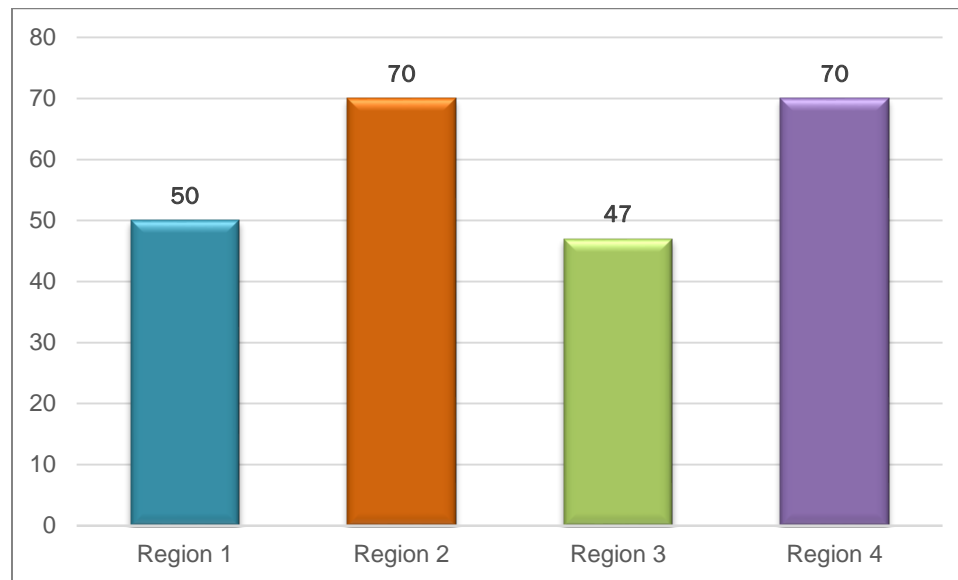


Figure 1. CEs prepared from January 1, 2016 to June 30, 2017, by region.

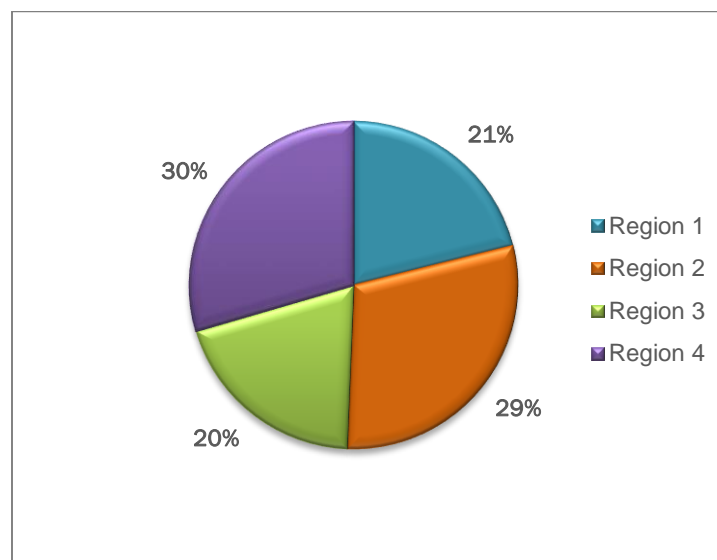


Figure 2. Percentage of CEs completed by each region.

Figure 3 illustrates the categories of CE projects approved by UDOT under the CE MOU. By far, the most common CE prepared is classified as 23 CFR 771.117(c)(26) with 62%, or 147 of 237 documents. This category includes all highway modernization projects, such as resurfacing, restoration, rehabilitation, the addition of shoulders or the addition of auxiliary lanes (e.g. parking, weaving, turning, or climbing). Other types of projects that were approved by UDOT during the reporting period are listed below by (c) and (d) category:

- c(3) – Construction of bicycle and pedestrian facilities
- c(4) – Activities included in the State's *Highway Safety Plan*
- c(5) – Transfer of Federal lands
- c(8) – Installing fencing, signs, pavement markings, or traffic signals
- c(21) – Installation of electronic signs and communication systems
- c(22) – Projects within the existing operation right-of-way
- c(23) – Limited Federal-funding
- c(26) – Highway modernization
- c(27) – Highway safety or traffic operation improvement projects
- c(28) – Bridge rehabilitation, reconstruction or replacement projects
- d(4) – Transportation corridor fringe parking facilities
- d(7) – Changes in access control
- d(13) – A(actions described in (c)(26-28) that do not meet identified constraints

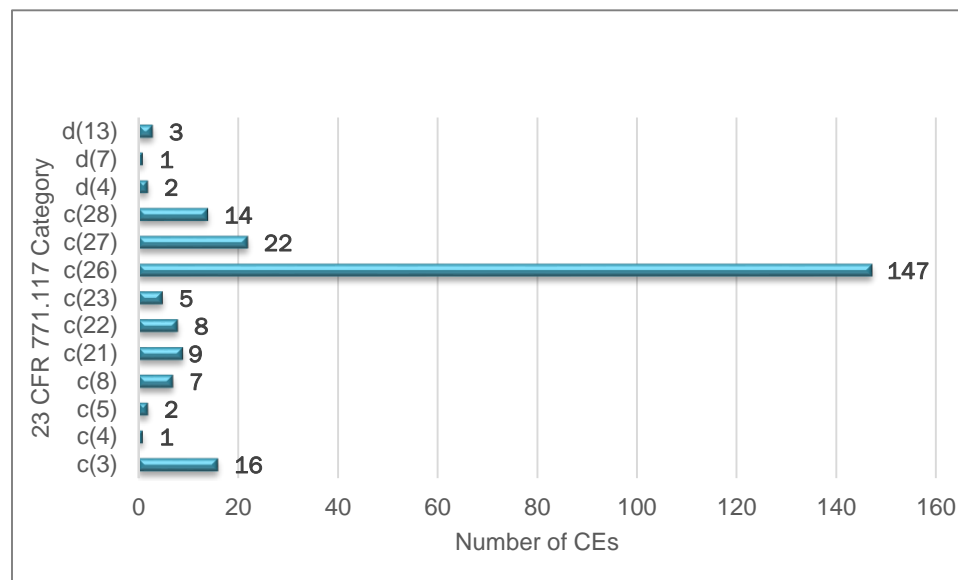


Figure 3. CE distribution by 23 CFR 771.117 category.

Additional responsibilities assigned to UDOT under the CE MOU include the responsibility to determine the Section 4(f) impacts of the delegated projects. During the period encompassed by this report, the projects with Section 4(f) impacts were *de minimis* determinations as shown in the table below.

Table 1. Section 4(f) Determinations, January 2016 – June 2017

Type of 4(f) Determination	Number
Individual 4(f)	0
Programmatic 4(f)	0
<i>De Minimis</i> 4(f)	18

Figure 4 shows the number of CEs prepared by UDOT environmental staff compared to the number of CEs prepared by consultants. Roughly 2/3 of all CEs were prepared in-house and approximately 1/3 were prepared by consultants.

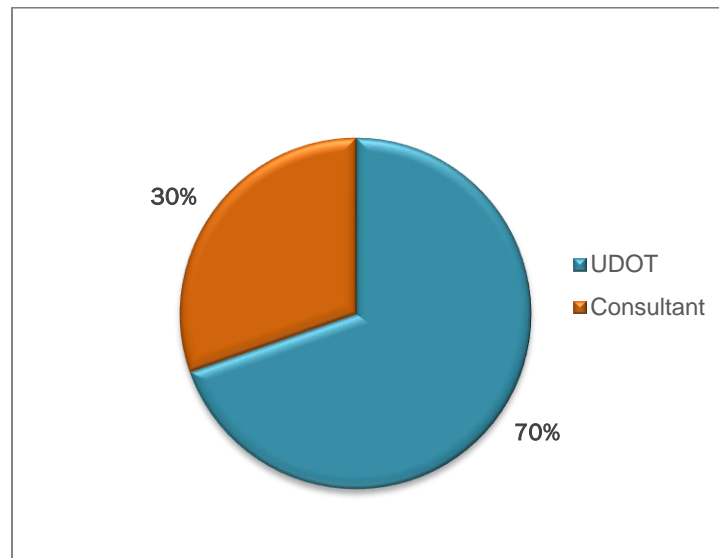


Figure 4. Distribution of CE preparation.

4. QC Efforts Summary: Areas for Improvement and Improvement Measures

UDOT implements a Quality Control (QC) process consistent with the requirements of Stipulation IV(E) of the MOU. To summarize, each assigned CE must be reviewed by someone who was not the preparer of the CE. UDOT Environmental Manager for each Region must approve the CE; they cannot also be the reviewer. This insures that two reviews take place for each CE before approval. Additionally, UDOT Central Environmental Managers review every CE to ensure the CE was classified correctly, that it was prepared correctly, and that all of the necessary documentation has been

uploaded to the UDOT ProjectWise document management system. Any errors are relayed to the UDOT Region Environmental Manager and are corrected as soon as possible.

As part of UDOT's QC Review Process, errors are tracked and reported internally on a semi-annual basis. As there is no reporting requirement in the CE MOU for this information, it is not included in the Semi-annual Reports to FHWA. The percentage of errors for each semi-annual report is shown in Figure 5. The cumulative error percentage for this reporting period is 11% which is a decrease from the previous reporting period.

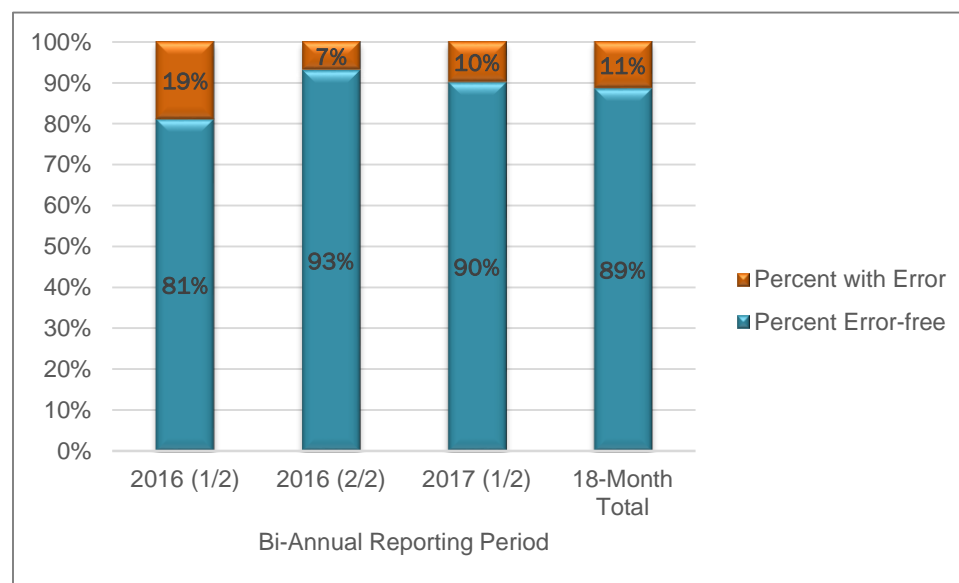


Figure 5. Percentage of errors in CEs.

As part of UDOT's QC reporting, error type is reported by type. There are seven types of errors noted:

1. CEs incorrectly approved by a consultant rather than a UDOT Region Environmental Manager or higher.
2. Reporting an incorrect response on the ePM form.
3. Missing information on the ePM form.
4. Using an incorrect form (from a previous version in ePM).
5. An incorrect or missing 23 CFR 771.117 (c) or (d) classification.
6. A vague purpose and need or project description.
7. The document preparer and reviewer is the same individual.

As shown in Figure 6, the most common errors were incorrect responses or missing information on the CE form. For all the errors identified, the errors were discussed with the Region Environmental Managers and additional training was provided to the entire Environmental Staff.

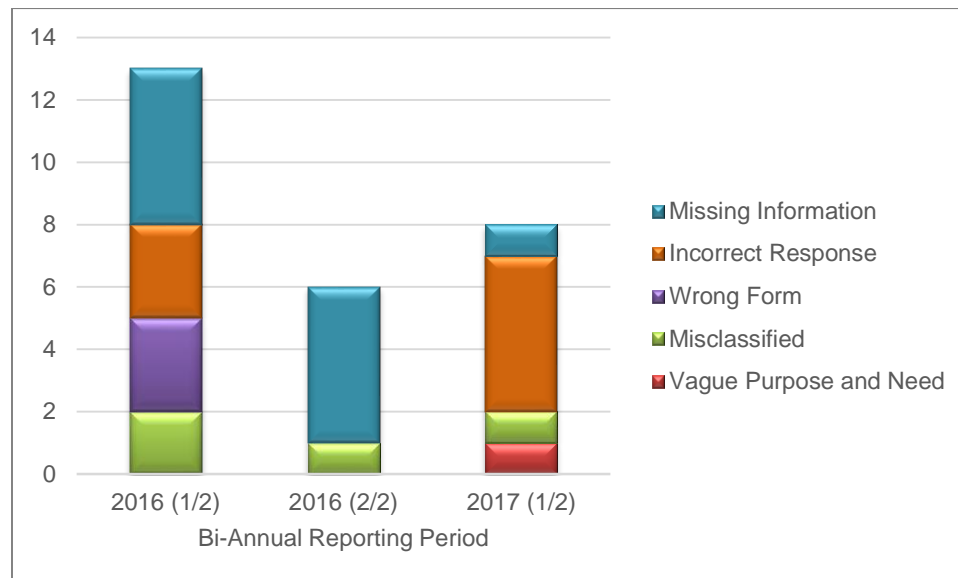


Figure 6. Error type by category of error.

There has been an overall decrease in errors during this reporting period. The Environmental Program Managers (who are both responsible for NEPA oversight) each mentor two Region Environmental Managers to address any deficiencies and errors which has likely contributed to the decrease in errors. UDOT Environmental Services has set an overall goal of 5% or few errors for all CEs approved under the CE MOU which is included in the performance plans of all Region Environmental Managers. The Environmental Program Managers, along with the Environmental Performance Manager, will continue to work with the Region Environmental Managers to address errors, best practices, and lessons learned from the Environmental department as a whole.

5. Quality and Timeliness Discussions

As part of the *FHWA Monitoring Review of SAFETEA-LU Section 6004 Categorical Exclusion Assignments* document, six quality measures and three timeliness measures are being qualitatively evaluated to help determine the efficacy of the Section 6004 delegation as part of this report. These measures are:

Quality Measures

1. CE decisions are appropriately and timely documented.
2. CE decisions are factually and legally supportable at the time the decision is made.
3. CE decision-making procedures comply with NEPA, 23 CFR 771.117, and the CE MOU.
4. UDOT has met staffing and quality control requirements of the MOU.
5. UDOT has complied with other State and Federal legal requirements.
6. UDOT has complied with recordkeeping requirements.

Timeliness Measures

1. Time savings associated with UDOT approving CEs instead of the FHWA.
2. Additional staffing hours required from UDOT.
3. Potential time savings for FHWA's environmental staff.

1.1 Quality Measures Discussion

For the qualitative evaluation of the Quality Measures, the UDOT is relying on the UDOT Quality Control Form and on the issues that have arisen since the MOU was signed. There is no baseline information for the quality of the CEs, as no quality measures were recorded prior to the CE MOU being signed. As a general assessment, UDOT feels that the overall quality of the CE documents has notably improved as a result of CE Assignment and the QC efforts. Prior to the approval of the CE MOU, the FHWA Utah Division office was responsible for conducting QC efforts per the December 31, 2003 *Agreement between UDOT and FHWA for Environmental Approval Authority for Selected Categorical Exclusion Documents* (2003 CE PA). However, these QC efforts were infrequent and were only conducted on a small percentage of the projects. UDOT's QC efforts under the CE MOU have included all approved CEs, and as a result, the overall quality of the CEs has noticeably improved. Specifically, UDOT feels that the CEs processed under the MOU have clearer purpose and need statements, have better defined project descriptions, and are more consistently correct in answering the questions on the ePM CE form than those prepared before the execution of the CE MOU.

1. CE decisions are appropriately and timely documented

During this reporting period, 4 (<2%) of the 237 CEs approved during the reporting period were improperly classified. These projects were correctly identified as CE projects, but had the wrong category of CE selected. There has been significant improvement since the previous 18-month reporting period (16 misclassifications) likely as a result of the training on the constraints of c(26)-(28). It is worth noting that no EA or EIS types/scopes of projects were submitted as CE projects.

2. CE decisions are factually and legally supportable at the time the decision is made

During this reporting period, 16 (7%) of the 237 CEs approved had either an incorrect response or missing information. Many of these errors were due to not attaching appropriate documentation (i.e. wetlands clearance, Native American consultation letters, Section 4[f] documentation, etc.) as well as misinterpreting questions on resource sections (i.e. wetlands, Section 4[f]). UDOT Environmental is currently developing a new CE program that will make the questions clearer on the CE form, integrate resource documentation uploads (i.e. cultural clearances), and review and approve the CE within the program. Despite these

errors, UDOT feels that the CE decisions have been made appropriately and based on legal and factual information.

3. CE decision-making procedures comply with NEPA, 23 CFR 771.117, and the CE MOU

UDOT feels that all decision-making, with regard to which projects should be classified as CEs have been in accordance with 23 CFR 771.117 and the CE MOU, with the exception of the instances mentioned in Section (1) above. UDOT QC efforts only found 4 of the 237 projects (<2% of all projects) that were not classified correctly when they were initially submitted and no instances where EA or EIS types of projects were submitted as CEs approved under the MOU. Overall, UDOT feels that the decisions and decision-making has been done appropriately. When questions have arisen, UDOT has consulted with the FHWA Utah Division office to determine the appropriate level of environmental documentation under NEPA.

4. UDOT has met staffing and quality control requirements of the MOU

UDOT feels that they have met the staffing and quality control requirements listed in Stipulation (IV)(D) of the CE MOU. UDOT has hired two full-time Environmental Program Managers (formerly classified as the NEPA Oversight Manager) and an Environmental Performance Manager to oversee the implementation of the CE MOU including the reporting and quality control activities. The UDOT Central Environmental Services staff (which consists of four resource specialists, two Environmental Program Managers, the Environmental Performance Manager and the Environmental Services Director) and the UDOT Region Environmental staff remain committed to the consistent implementation of the CE MOU including performing quality reviews. Periodic reminders on issues pertaining to the implementation of the CE MOU are discussed at UDOT Quarterly Environmental Staff Meetings. In addition, new environmental staff is educated on the intricacies and procedures of the CE MOU.

5. UDOT has complied with other State and Federal legal requirements

Based on the UDOT Quality Control Form, UDOT has not had any issues complying with any other Federal or State legal requirements. UDOT remains committed to performing state and federal consultations such as Section 7 of the Endangered Species Act and Section 106 of the Historic Preservation Act as well as preparing consultation packages for FHWA's use in Native American consultation on CE MOU CE projects.

6. UDOT has complied with recordkeeping requirements

In March 2009, UDOT instituted the ProjectWise document management database system. All CEs completed since March 2009 have the final CE and all associated documentation stored electronically as a PDF on the ProjectWise system. Further, UDOT prepares and submits Semi-Annual Reports on CE MOU activities for FHWA use and public use (via the web).

1.2 Timeliness Measures Discussion

7. Time savings associated with UDOT approving CEs instead of the FHWA

For context in evaluating time savings, it is worth noting that the time required to approve CEs varies. UDOT has tracked review and approval dates as part of the CE Delegation. Most UDOT approved CEs are approved the same day or the day after they are submitted and reviewed. However, some CEs have had an additional time period, ranging from two days to 33 days, between the review date and the approval date. In many instances, the extended approval time applies to Consultant-prepared CEs. Furthermore, UDOT review times are necessary even for Documented CEs that are approved by the FHWA Utah Division, so the requirement for FHWA approval does not preempt the need for a UDOT review period.

The CE MOU allows UDOT to approve all 23 CFR 771.117 (c) or (d) list projects without FHWA review and approval. Prior to the CE MOU, the FHWA Utah Division office did have to approve more CE projects. While there is no baseline data by which to evaluate the time savings that have resulted from the lack of FHWA review on projects approved under the CE MOU, UDOT does have time information for CE projects that FHWA approved in 2007 and Documented CEs that were approved by the FHWA Utah Division in the reporting period.

For the projects completed in 2007 before the MOU and approved by FHWA, the range of time needed to obtain FHWA approval ranged between 1 and 77 days. Since the majority of CEs prepared under the 6004 are approved within one day of being reviewed, a significant time savings is demonstrated. Therefore, having the CE Delegation does save UDOT time in obtaining approval for each CE that it approves under the MOU. The significance of these time savings has not been established. Overall, UDOT is satisfied with the time savings experienced as a result of executing the CE MOU.

8. Additional staffing hours required from UDOT

By administering the CE MOU, UDOT has undertaken additional staffing hours and administrative duties than it had previously performed. UDOT Region Environmental staffs have not noticed a large increase in their workload as a result of the CE delegation. Additional administrative duties that UDOT Environmental Services has undertaken include the QC efforts for every CE prepared, semi-annual and self-assessment reports, and coordination with the UDOT Region Environmental Managers on determining the appropriate “c or d list” category of CE for some projects. It is estimated that the UDOT Environmental Services spends approximately 30 minutes for the QC of each CE approved under the CE MOU, which results in approximately 80 hours of administrative effort annually. Additionally, UDOT Environmental Services averages an additional 30 hours of effort per semi-annual report, which equates to approximately 60 hours of effort annually. Miscellaneous administrative and overhead duties associated with the MOU average approximately 15 hours per month. Assuming an average number of 50 CEs per quarter, UDOT expends over

300 hours per year performing the reporting responsibilities delegated to it under the CE MOU.

Additionally, prior to the signing of the MOU, UDOT estimates that the Environmental Services personnel spent over 300 hours of time preparing the MOU and the associated guidance materials and monitoring plan. A significant time effort was also expended preparing for both renewals of the CE MOU. Overall, by signing the CE MOU, UDOT has taken on additional duties and has expended additional time administering these duties. However, UDOT feels that the additional time and effort has been worthwhile, due to the improved quality of the CEs and the time savings that have resulted from not needing FHWA approval on CE projects.

9. Potential time savings for FHWA's environmental staff

At this time, we are unaware of FHWA time savings data resulting from the 326 CE MOU, however, in theory a time savings has been realized at FHWA as a result of assigning the CE review/approval responsibility to UDOT.

6. 23 U.S.C. 326 MOU Renewal

The third renewal of the 326 CE MOU between FHWA and UDOT was executed on June 23, 2017. Future CE monitoring and reporting requirements are outlined in Section IV(F) – MOU Performance Monitoring and Quality Assurance and will be followed accordingly.